HIGH COURT OF UTTARAKHAND AT NAINITAL.

(Court's order whether the case is or not approved for reporting)
(Chapter VIII Rule 32 (2) (b)

Description of the Case.

Writ Petition No. 3815 (S/S) 2001
(Old no. 15435 of 1997)

Surendra Singh Negi. ... Petitioner

Vs.

The State of U.P. and two ors. ... Respondents

Approved for reporting.

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Not approved for reporting.

Date of Decision 22 May, 2007 .

Initial of Judge.

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COURT NO.3

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No.3815 (S/S) of 2001

(Old Case No.15435 of 1997)

Surendra Singh Negi, son of Sri Budhi Singh Negi, resident of Upper Kala Garh No.4, Nagar Palika School, Kotdwara, district Pauri Garhwal

…… Petitioner

Versus

1. The State of U.P. through the Secretary, Ravenue Department, U.P. at Lucknow
2. The District Magistrate, Pauri Garhwal.
3. The General Manager, Garhwal Jal Sansthan, 62, Race Course, Dehradun.

….Respondents

Dated: 22.5.07

Hon'ble M.M. Ghildiyal, J.

Heard Sri B.D. Upadhyaya, learned counsel for petitioner, Smt. Beena Pandey, learned Standing Counsel for the State of U.P. for respondent No.1, Sri Paresh Tripathi, learned Standing Counsel for the State of Uttarakhand for respondent no.2 and Sri Rakesh Thapliyal, learned counsel for respondent no.3.

By means of this petition, the petitioner has prayed for the following reliefs:

i. to issue a writ, order or direction in the nature of mandamus directing the respondents to pay the Pension, Gratuity and General Provident Fund to the petitioner as it is being paid to a Government Servant with interest at the rate of 18% per annum.

ii. To issue any other suitable writ, order or direction which this Hon'ble court may deem fit and proper in the circumstances of the case.

iii. To award the cost of the present writ petition to the petitioner.

The respondents were granted time to file counter affidavit, however, till date none of the respondents has filed counter affidavit.

The stand of the petitioner is that he was appointed on the post of Khalasi vide order dated 01.05.1955 by the District Magistrate, Pauri Garhwal. Vide order dated 31.12.1964 the services of the petitioner were made permanent and pensionable. Order dated 31.12.1964 reads as under:-

> *"Sri Pancham Sing Khalasi water works Kotdwara is invalidated out of service w.e.f. 1.1.1964 on the report of the Civil Srugeon Pauri dated 31.10.1964. Sri Surendra Singh Khalasi Regaddi water supply schme being the senior most Khalasi there is hereby transferred to water works Kotdwara in place of Sri Pancham Singh Khalasi and his services are made permanent and pensionable w.e.f. 1.1.1964.*
>
> *Sri Fateh Singh an outsider candidate sent by the employment Exchange Landsdowne is temporarily appointed as a Khalasi in place of Sri Surendra Singh w.e.f. 1.1.1965.*
>
> *Sd. B. K. Goswami*
> *Deputy Commissioner &*
> *Officer I/C., C.B.G.E.,*
> *Dotdwara Garhwal. 31.12.64"*

Vide letter dated 23.09.1967, the Peshkar, Kotdwara, Garhwal transferred the Water Works, Kotdwara to Municipal Board, Kotdwara w.e.f.

1st October 1967 alongwith the staff including petitioner, the said letter is filed as Annexure No.2 to the writ petition, which is reproduced as under:-

> *"Sir,*
>
> *I have been directed by the Deputy commissioner, Garhwal that Kotdwara Water Works should be transferred to the Municipal Board, Kotdwara with immediate effet. I shall therefore request you kindly to take over the above water supply under your control w.e.f. the 1st Oct. 1967.*
>
> *The following staff will also be transferred along with the water supply scheme:*
>
> *Supervisor……1*
> *Mechanic……1 and*
> *Khalasi……4*
>
> *They all are permanent hands and will be paid pension after their retirement.*
>
> *Please depute one of your responsible official to take over the stock of Mechanicals and tools which are in the stock with me.*
>
> *Yours faithfully,*
>
> *Gopal Singh*
> *Peshkar Kotdwara, Garhwal*
> *23.9.67"*

Thereafter, vide order dated 02.02.1974 passed by the District Magistrate, Pauri Garhwal, the petitioner's salary was fixed in the revised pay scale. In the year 1975, U.P. Water Supply and Sewerage Act, 1975 has been enacted and all these Water Works came under the supervision of Jal Sansthan w.e.f. 02.10.1975. Under Section 78 of the U.P. Municipalities Act, 1916, Municipality shall contribute to the pension and leave allowances of any servant-

(a) whose services are lent or transferred by Government to the Municipality.

The petitioner's services were transferred from the Government to municipality and as such the case of the petitioner is covered under Section 78 of the U.P. Municipalities Act, 1916.

Section 38 of the U.P. Water Supply and Sewerage Act, 1975 provides for transfer of employees to Jal Sansthan. Section 38 of the U.P. Water Supply and Sewerage Act, 1975 is quoted hereunder:-

> ***"Transfer of employees to Jal Sansthan.-*** *(1) save as otherwise provided in this section, every person (excluding a member of a service created under [Section 27-A of this Act] Section 69-B of the U.P. Municipalities Act, 1916, and Section 112-A of the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959) who was employed exclusively in connection with water supply or sewerage services or sewage works or sewage farms under the local body for the local areas of which a Jal Sansthan has been constituted shall, on and from the said date, become an employee of the Jal Sansthan and shall hold his office or service herein by the same tenure, at the same remuneration and upon the same other terms and conditions and with the same rights and privileges as to pension, gratuity and other matters as he would have held the same on the said date if the aforesaid water supply and sewerage service, sewage works and sewage farms had not been transferred to and vested in the Jal Sansthan is terminated or until his remuneration or other terms and conditions of service are revised or altered by the Jal Sansthan under or in pursuance of any law or in accordance with any provision which for the time being governs his service:*
>
> *Provided that nothing contained in this sub-section shall apply to any such employee who, by notice in writing given to the State government within such time as the State Government may, by general*

or special order, specify, intimates his intention of not becoming an employee of the Jal Sansthan:

Provided further that the services of any employee referred to in the preceding proviso under the local body, shall stand terminated on account of abolition of the post held by him and he shall be entitled from the local body to compensation equivalent-

(a) in the case of permanent employee, to three months' remuneration;

(b) in the case of a temporary employee, to one month's remuneration.

(2) Notwithstanding anything in sub-section (1) but subject to any express agreement to the contrary, any person referred to therein, other than a workman as defined in the U.P. Industrial Disputes Act 1947, who becomes an employee of the Jal Sansthan shall be liable to be transferred from any establishment or undertaking in which he was employed immediately before the said date to any other establishment or under taking belonging to the Jal Sansthan at the same remuneration and on the same other terms and conditions as govern him immediately before such transfer.

(3) If any question arises as to whether any person was exclusivey employed in connection with the aforesaid water supply and sewerage services, sewage works and sewage farms under the local body immediately before the said date, it shall be decided by the State Government.

(4) The sums standing to the credit of the employees referred to in sub-section (1) in any pension, provident fund, gratuity or other like funds constituted for them shall be transferred by the local body concerned by the Jal Sansthan along with any accumulated interest due till the said date and with the accounts relating to such fund and the Jal Sansthan shall, to the exclusion of the local body, be liable for payment of pension, provident fund,

gratuity or other like dues as may be payable to such employees at the appropriate time in accordance with the conditions of the their service.

(5) Notwithstanding anything contained in the U.P. Industrial Disputes Act, 1947, or, in any other law for the time being in force, the transfer of services of any employee to the Jal Sansthan under sub-section (1) shall not entitle any such employee to any compensation under that Act or such other law, an no such claim shall be entertained by any court, tribunal or authority.

(6) Every permanent or temporary employee of a local body becoming an employee of a Jal Sansthan under sub-section (I) shall, on and from the said date be a permanent or temporary employee of the Jal Sansthan, as the case may be, against a permanent or temporary post which shall stand created in the establishment of the Jal Sansthan with effect from the said date.

(7) An employee referred to in the first proviso to sub-section (I) shall be deemed to have continued to be in the service of the local body concerned between the said date and the date of abolition of posts under the second proviso to that sub-section, but the local body shall be entitled to reimbursement from the Jal Sansthan of the remuneration paid by it to such employee for that period and also of the compensation referred to in the second proviso to that sub-section.

(8) Nothing in para 426 or para 436 of the Civil Service Regulations as applicable to Government servants or in any other rules relating to employees to the local bodies in relation to retrenchment or abolition of posts shall except to the extent provided in this section, apply to any employee referred to in sub-section (1).

(9) Notwithstanding anything contain in [Section 27-A of this Act] Section 69-B of the U.P. Municipalities Act, 1916, and

Section 112-A of the Uttar Pradesh Nagar Mahapalika Act, 1916, or in the rules relating to centralized services made under the said sections, every person belonging to a centralized service referred to in the said sections and rules shall be bound [to service with such Jal Sansthan or the Nigam to which his services are for the time being lent or transferred] by an order of the Director of Local Bodies, Uttar Pradesh, and no such employee shall be entitled to any deputation or other allowances merely on the ground of such deputation, and subject thereto, they shall continue to remain the members of the centralized service on the same terms and conditions as before being placed on such deputation.

(10) Notwithstanding anything contained in the foregoing sub-sections-

(a)the services of no person who was employed under any local body immediately before the appointed date against whom any disciplinary proceeding was pending or to whom any notice or order of termination of his services or compulsory retirement had been issued before the appointed date shall stand transferred to the Jal Sansthan on or from the appointed date, and such persons may be dealt with after the appointed date, in such manner and by such authority as the State Government may by general or special order specify in this behalf;

(b)if the services of an employee of a local body stand transferred under sub-section (1) to the Jal Sansthan, the Jal Sansthan shall be competent after such transfer to take such disciplinary or other action as it thinks fit against or in respect or such employee having regard to any act or omission or conduct or record of such employee while he was in the service of the local body."

Thus the services of petitioner stood transferred to Jal Sansthan as per Section 38 of the Act.

The petitioner retired from service on 30.11.1992 and after retirement he approached the respondents for making payment of gratuity, pension and other retrial benefits. On 23rd August 1983, the General Manager, Garhwal Jal sansthan wrote a letter to the Deputy secretary, Nagar Vikas Anubhag-3, Uttar Pradesh Government that under Section 38 of the U.P. Water Supply and Sewerage Act, 1975 the employees who were transferred from Municipality to the Jal Sansthan are entitled to get all those retirement benefit which they would have got if they were serving in the previous department but since the petitioner was not entitled for pension and gratuity in Nagar Palika, Kotdwara he is not entitled to get pension and other benefits. This decision is contrary to the order passed by the District Magistrate while transferring the petitioner from Revenue Department to Municipal Board, Kotdwara wherein it is specifically stated under transfer order that services of Sri Surendra Singh Negi are made permanent and pensionable w.e.f. 01.01.1964.

Since the services of petitioner were permanent and pensionable when he was working with the Revenue Department he was entitled to get the same benefit while working under Municipalities and thereafter under the Garhwal Jal Sansthan in view of Section 78 of U.P. Municipalities Act, 1916 and Section 38 of the U.P. Water Supply and Sewerage Act, 1975. The District Magistrate time and again wrote to the Garhwal Jal Sansthan to send the necessary papers for grant of pension and gratuity to the petitioner which were ultimately sent by the Sansthan to the District Magistrate who has

forwarded these papers to the Directorate of Pension, Lucknow. However, the Directorate of Pension, Lucknow has returned the paper to the District Magistrate with remark that the petitioner will get the retirement benefit, if any, from Garhwal Jal Sansthan which is clear from the letter dated 01.07.1995 to the Executive Engineer, Garhwal Jal Sansthan, Kotdwara. In this respect letter dated 6th May 1994 issued by District Magistrate, Garhwal and addressed to the Executive Engineer is very relevant wherein it is stated by the District Magistrate that Sri Ranjeet Singh, Sri Maheshwar Dutt Pant and Sri Som Prakash Goel, who were similarly situated have already been sanctioned pension by the Accountant General, U.P., Allahabad.

It is strange that similarly situated persons have been granted pension by the Accountant General, U.P., Allahabad and the petitioner has been denied for pensionary benefits and the gratuity for which he is entitled.

The Secretary, Garhwal Jal Sansthan, Dehradun vide letter dated 16.03.1996 has informed the petitioner to submit pension papers under the U.P. Nagar Palika Non Centralized Services Retirement Benefits Regulations, 1984. The petitioner has already replied to this letter that he is entitled to get pension as per Section 78 of the U.P. Municipalities Act, 1916 and 38 of the U.P. Water Supply and Sewerage Act, 1975 and not under the U.P. Nagar Palika Non Centralized Services Retirement Benefits Regulations, 1984.

The petitioner was retired in the year 1992. About 15 years have passed but he has not been provided the pensionary benefit and other retirement dues for which

he is entitled in accordance with law.

The writ itself was filed in the year 1997. Number of times respondents were granted time to file counter affidavit. On 22.02.2007, further three weeks and no more time was granted to respondent no. 1 to file counter affidavit but no counter affidavit has been filed.

A claim petition was filed by one Som Prakash Goel, who was similarly situated, before the U.P. Public Service Tribunal, Lucknow and the Tribunal vide its order dated 07.08.1986 allowed the claim petition of Sri Som Prakash Goel. The said order was not challenged by the respondents and in pursuance of the aforesaid order Sri Som Prakash Goel is getting pension and has already been paid gratuity as per law. In pursuance of this order, Sri Ranjeet Singh and Sri Maheshwar Dutt Pant, who were also on the same footing have been granted the pensionary benefit and gratuity, however, the petitioner has been deprived of from the benefit of pension and the gratuity.

Since there is no counter affidavit filed by the respondents, as such, the Court is left with no option but to accept the case of the petitioner as stated in the writ petition.

For the reasons recorded above, the Writ Petition is allowed. Respondent no. 1 is directed to make payment of pension and gratuity to the petitioner as per Rule, under which the similarly situated persons have been granted, within a period of three months from the date of production of certified copy of this order. No order as to costs.

(M. M. Ghildiyal, J.)

RBS